IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI.WRIT PETITION NO.268 OF 2007

1. Haresh Mahadev Kamble]
Aged about 30 years]
Convict No.9217]
(Presently lodged at]
Yerwada Central Prison]
Pune-411006)]
]
2. Naresh Dhondiram Mogare]
Aged about 31 years]
Convict No.4323]
Presently lodged at]
Thane Central Prison,]
Thane]..Petitioners

Vs.

1. The State of Mah.]
2. The Inspector General]
of Prisons, Pune.]..Respondents

...

Ms.Sharmila Kaushik Advocate for the Petitioners
Mr.V.B.Konde-Deshmukh APP for State

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CORAM: R.M.S.KHANDEPARKAR, AND SMT.V.K.TAHILRAMANI, JJ.

DATE : JULY 16, 2007

P.C. [PER SMT.V.K.TAHILRAMANI,J.]:

1. Heard Ms.Kaushik, the learned advocate for the applicants and the learned APP for the State.

2. The Petitioners have been convicted mainly under Section 376(2)(g) of the IPC and sentenced to imprisonment for life. Being aggrieved thereby, the petitioners preferred an appeal before the High Court. The appeal came to be dismissed. Thereafter, the Petitioner No.2 preferred an appeal before the Supreme Court of India which also came to be dismissed.

3. Petitioner No.1 Harish Mahadev Kamble is in Yeravada Central Prison, Pune and the Petitioner No.2 Naresh Dhondiram Mogare is in Thane Central Prison. Both the Petitioners are co-accused in the same case. The case of the Petitioners is that they have been in custody since the date of their arrest i.e. 17.11.1993. Thus, they have already undergone 13 years of imprisonment including remissions. Hence, the Petitioners have prayed that the case of the petitioners may be considered for pre-mature release. The case of the Petitioner No.1 Harish Kamble was forwarded to the Government and the Petitioner No.1 was informed that he would be released on completion of 28 years of imprisonment including all remissions subject to the good conduct in prison up to the time of his

release.

4. Ms.Kaushik, the learned advocate for the Petitioners submitted that the Government has erroneously decided that the Petitioner No.1 should be released on completion of 28 years of imprisonment including remissions. Ms.Kaushik submitted that the guidelines of 1992 do not provide for cases like that of the petitioners. She pointed out that Categories No. 1 to 7 of guidelines dated 11.5.1992 deal with life imprisonment awarded for murder and category No.8 deals with life imprisonment not awarded for murder but for offences relating to the State or against the public justice or in respect of offences relating to stamps and coins. Category No.8 reads as under:

(8) PERSONS GUILTY OF OFFENCES NOT INVOLVING MURDER, WHO ARE SENTENCED TO LIFE IMPRISONMENT:

. a) Persons sentenced to life imprisonment for offences like (a)

offences against the State (Chapter VI) IPC, (b) Abetment of Mutiny (Sections 131, 132 IPC), (c) Offences against public justice (Sec.222 and 225 of IPC), (d) Offences in respect of Coinage, Stamps (Sec.232, 238, 225 of IPC. etc.) 30 years

. Ms.Kaushik submitted that however, the Government has issued circular dated 1.5.1992 which deals with pre-mature release, wherein it is stated as under:

. "The earlier guidelines dated the 16th December, 1978 however continue to apply to the cases of the convicts not covered by Section 433-A excepting those which are specifically included in the revised guidelines, namely, the convicts covered under category no.8".

. Ms.Kaushik submitted that in view of this circular, the case of both the Petitioners would be covered by the 1978 Guidelines. Ms.Kaushik thus

submitted that in view of the 1978 guidelines, the convicts would have to undergo 24 years of imprisonment including remissions. The guidelines dated 16.11.1978 under 14 year Rule deals with murders for various reasons. They also deal with hardened criminals escapees where the death sentence has been commuted by the Government. Category no.8 of the said guidelines deals with convicts who are sentenced to life imprisonment in offences not relating to murder.

5. Ms.Kaushik submitted that as per the Circular dated 11.5.1992, it clearly shows that in other cases, 1978 guidelines would apply and the case of the Petitioners would fall under category no.8 of the 1978 guidelines which prescribe the period of 24 years of imprisonment with remission. Hence, she submitted that the case of the petitioners would fall under category no.8 of 1978 guidelines and both the petitioners would have to undergo 24 years of imprisonment with remissions and not 28 years as was informed to the Petitioner No.1. There seems to be much merit in the submission made by Ms.Kaushik.

6. In cases like those of the present petitioners, the appropriate Government has the power to remit the sentence. The affidavit of Mr.Avinash M.Sable the Under Secretary, Home Department states that the case of the Petitioners would not be covered by the 1992 guidelines but it would be covered by the 1978 guidelines for cases like those of the petitioners. We have already observed that the 1978 guidelines prescribe 24 years of imprisonment with remissions for cases like those of the petitioners. In this view of the matter, the order dated 5.6.2007 stating that Petitioner No.1 Harish Mahadev Kamble should be released on completion of 28 years of imprisonment including all remissions, is set aside.

7. In view of the above, we are of the opinion that 1978 guidelines would apply as rightly submitted by Ms.Kaushik as well as by the State and hence, the Petitioners should be released on completion of 24 years of imprisonment with remissions.

8. The petition is allowed in the above terms.

[R.M.S.KHANDEPARKAR, J.]

[SMT.V.K.TAHILRAMANI,J.]